

ESTTA Tracking number: **ESTTA238680**

Filing date: **09/24/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92048271
Party	Defendant Patriarch Partners Agency Services, LLC
Correspondence Address	Patrick J. Orme Chirstie, Parker & Hale, LLP P.O. Box 7068 Pasadena, CA 91109-7068 UNITED STATES pto@cph.com
Submission	Motion to Suspend for Civil Action
Filer's Name	Patrick J. Orme
Filer's e-mail	pto@cph.com
Signature	/Patrick J. Orme/
Date	09/24/2008
Attachments	Motion for Stay.pdf (3 pages)(56314 bytes) Complaint.pdf (14 pages)(609288 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

RHINO LININGS USA, INC.

Petitioner,

v.

PATRIARCH PARTNERS AGENCY
SERVICES, LLC (RAPID RACK
INDUSTRIES, INC.)

Respondent.

Cancellation No. 92048271

Registration No. 1,698,407

Date of Issue: June 30, 1992

RESPONDENT'S MOTION FOR STAY OF PROCEEDINGS

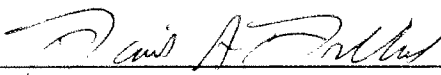
Respondent Rapid Rack Industries, Inc. ("Rapid Rack") hereby moves for an order staying this cancellation proceeding on the grounds of judicial economy in that Rapid Rack has commenced an action against petitioner, Rhino Linings USA, Inc. ("Rhino Linings") in the United States District Court for the Central District of California, Civil Action No. CV08-06266 DSF (RZx), seeking adjudication of the same factual issues which are the basis of this cancellation proceeding. Such issues include: (1) whether Rapid Rack's United States Trademark Registration No. 1,698,407 for the RHINO RACK mark is valid; (2) whether Rapid Rack continuously used the RHINO RACK mark during at least between 2001 and 2007; (3) whether Rapid Rack did not act fraudulently in filing an affidavit of use under Sections 8 and 9 of the Lanham Act; and, (4) whether Rapid Rack's rights in the trademark RHINO RACK are superior to those of Rhino Linings' unregistered RHINO, RHINO SHELVING, RHINO STORAGE and RHINO GARAGE marks. A copy of the Complaint in the referenced civil action is attached hereto as Exhibit A.

WHEREFORE, Respondent respectfully requests that this proceeding be stayed pending final resolution of the referenced civil action.

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

Date: September 24, 2008

By 
David A. Dillard
Attorneys for Applicant
P.O. Box 7068
Pasadena, California 91109-7068
626/795-9900

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TRADEMARK
Docket No. 110.2*1/R643
Cancellation No. 92048271
Registration No. 1,698,407

CERTIFICATE OF TRANSMISSION AND SERVICE

I certify that on September 24, 2008, the foregoing RESPONDENT'S MOTION FOR STAY OF PROCEEDINGS is being electronically filed with:

Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

It is further certified that on September 24, 2008, the foregoing RESPONDENT'S MOTION FOR STAY OF PROCEEDINGS is being served by mailing a copy thereof by first-class mail addressed to:

David A. Harlow
Nelson, Mullins Riley & Scarborough LLP
4140 Parklake Avenue GlenLake One, Suite 200
Raleigh, NC 27612

By: /s/ Betty L. Venuti
Betty L. Venuti

CONFORM COPY

FILED

1 DAVID A. DILLARD, CA Bar No. 97515
david.dillard@cph.com
2 PATRICK J. ORME, CA BAR NO. 239,025
patrick.orme@cph.com
3 CHRISTIE, PARKER & HALE, LLP
350 West Colorado Boulevard, Suite 500
4 Post Office Box 7068
Pasadena, California 91109-7068
5 Telephone: (626) 795-9900
Facsimile: (626) 577-8800

2008 SEP 23 PM 3:26

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

6 Attorneys for Plaintiff,
7 RAPID RACK INDUSTRIES, INC.

8
9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11
12 RAPID RACK INDUSTRIES, INC., a
13 California corporation,

14 Plaintiff,

15 vs.

16 RHINO LININGS CORPORATION, a
California corporation; and RSI HOME
17 PRODUCTS MANUFACTURING,
INC., a California corporation

18 Defendants.
19

Case No. **CV08-06266** (R Z)

**COMPLAINT FOR
TRADEMARK INFRINGEMENT,
UNFAIR COMPETITION,
DECLARATORY RELIEF OF
VALIDITY AND
ENFORCEABILITY OF
TRADEMARK REGISTRATION
DEMAND FOR JURY TRIAL**

20
21 For its Complaint, Plaintiff Rapid Rack Industries, Inc. alleges as follows:

22
23 **I. JURISDICTION AND VENUE.**

24 1. This is an action for infringement of a registered trademark in
25 violation of 15 U.S.C. § 1114, and for common law unfair competition.
26 Jurisdiction is conferred by 28 U.S.C. §§ 1338(a) and (b). This Court has
27 supplemental jurisdiction over Plaintiff's state law claim under 28 U.S.C. §
28 1367(a). Plaintiff also seeks declaratory relief arising under the Trademark Laws

CONFORM COPY

1 of the United States, 15 U.S.C. § 1051 *et seq.*, and 28 U.S.C. §§ 2201, 2202, and
2 which seek a declaration of trademark validity and enforceability.

3 2. Venue is proper under 28 U.S.C. § 1391(b) in that Defendants reside
4 in California pursuant to 28 U.S.C. § 1391(c).

5
6 **II. PARTIES.**

7 3. Plaintiff Rapid Rack Industries, Inc. ("Rapid Rack") is a corporation
8 organized and existing under the laws of the State of California having a business
9 address at 14421 Bonelli Street, City of Industry, California, 91746.

10 4. On information and belief, Defendant Rhino Linings Corporation
11 ("Rhino Linings") is a corporation organized and existing under the laws of the
12 State of California having a business address of 9151 Rehco Road, San Diego
13 California, 92121-3288.

14 5. On information and belief, Defendant RSI Home Products
15 Manufacturing, Inc. ("RSI") is a corporation organized and existing under the
16 laws of the State of California having a business address of 400 East
17 Orangethorpe Street, Anaheim, California, 92801.

18
19 **III. FACTS COMMON TO ALL CLAIMS.**

20 6. Rapid Rack is in the business of manufacturing and distributing
21 work tables, work benches and storage racks. Rapid Rack's products have had an
22 outstanding commercial success for 15 years and are distributed nationwide,
23 including California.

24 7. Rapid Rack is the owner of United States Trademark Registration
25 No. 1,698,407 for RHINO RACK ("the '407 Registration") for work tables with
26 and without wheels, work benches, industrial shelving, storage racks, and
27 component parts therefor. The '407 registration issued on June 30, 1992 and is
28

1 valid and existing on the Principal Register of the United States Patent and
2 Trademark Office (the "PTO") and is incontestable under 15 U.S.C. § 1065. A
3 true copy of the '407 registration is attached hereto as Exhibit A.

4 8. Rapid Rack's products bearing the mark RHINO RACK are sold
5 through a variety of retail outlets, including Ace Hardware, True Value
6 Hardware, and Orchard Supply Hardware.

7 9. Rapid Rack has been careful, skillful and diligent in its conduct of its
8 business and has maintained uniform standards of high quality in its goods. As a
9 result of these efforts, Rapid Rack's RHINO RACK mark has acquired public
10 acceptance and is recognized by the public as being associated with higher quality
11 hardware products, thereby creating goodwill which inures to Rapid Rack's
12 benefit.

13 10. Upon information and belief, Rhino Linings and RSI have used the
14 mark "Rhino Storage" in connection with the sale of cabinetry, shelving, and
15 worktops through retail outlets including Loew's home improvement stores.
16 Rhino Linings' and RSI's use of the RHINO STORAGE mark has been and
17 continues to be without the authorization and consent of Rapid Rack.

18 **FIRST CLAIM FOR RELIEF**

19 **(Infringement of a Registered Trademark)**

20 11. Rapid Rack repeats and incorporates herein the allegations contained
21 in paragraphs 1 through 10 hereinabove.

22 12. The above-cited acts by Rhino Linings and RSI constitute
23 infringement of a registered trademark in violation of 15 U.S.C. § 1114 in that
24 Rhino Linings has used the RHINO STORAGE mark in promoting and selling
25 their goods, thereby falsely designating the source of origin and affiliation,
26 approval or sponsorship of such goods.

27 13. Rapid Rack has been damaged by Rhino Linings' and RSI's
28

1 trademark infringement by reason of the likelihood that customers have been
2 confused as to the source or affiliation, sponsorship or approval of Rhino Linings'
3 and RSI's goods and the relationship of such goods to Rapid Rack.

4 14. Rhino Linings and RSI have profited from their actions of trademark
5 infringement alleged herein.

6 15. By reason of Rhino Linings' and RSI's actions alleged herein, Rapid
7 Rack has suffered damage to its goodwill and the loss of sales and profits Rapid
8 Rack would have made but for Rhino Linings' and RSI's acts.

9 16. On information and belief, Rhino Linings' and RSI's acts of
10 infringement have been willful and taken without regard to the established rights
11 of Rapid Rack.

12 **SECOND CLAIM FOR RELIEF**

13 **(Unfair Competition Under California Common Law)**

14 17. Rapid Rack repeats and realleges paragraphs 1 through 16
15 hereinabove.

16 18. The above-described conduct of Rhino Linings and RSI constitutes
17 unfair competition under the common law of the State of California.

18 19. As a result of such actions, Rapid Rack has been damaged in an
19 amount to be proven at trial.

20 20. Because Rhino Linings' and RSI's conduct has been intentional,
21 willful, and in reckless disregard of Rapid Rack's rights, Rapid Rack is entitled to
22 punitive damages against Rhino Linings and RSI.

23 **THIRD CLAIM FOR RELIEF**

24 **(Declaratory Relief That Federal Trademark Registration No. 1,698,407 Is**
25 **Valid And Enforceable)**

26 21. Rapid Rack repeats and realleges paragraphs 1 through 20
27 hereinabove.

1 22. On October 15, 2007, Rhino Linings filed a Petition to Cancel U.S.
2 Registration 1,698,407 for the mark RHINO RACK alleging that: (1) Rapid
3 Rack's United States Trademark Registration No. 1,698,407 for the RHINO
4 RACK mark is invalid; (2) Rapid Rack did not continuously use the RHINO
5 RACK mark at least between 2001 and 2007; (3) Rapid Rack acted fraudulently
6 in filing an affidavit of use under Sections 8 and 9 of the Lanham Act; and, (4)
7 Rapid Rack's rights in the trademark RHINO RACK are not superior to those of
8 Rhino Linings' unregistered RHINO STORAGE mark.

9 23. There is an actual justiciable controversy between Rapid Rack and
10 Rhino Linings concerning the validity of the '407 registration.

11 24. Rapid Rack did not abandon the RHINO RACK mark during the
12 period 2001 through 2007.

13 25. Rapid Rack did not act fraudulently in filing an affidavit of use under
14 Sections 8 and 9 of the Lanham Act.

15 26. Rapid Rack has priority of use of the mark RHINO RACK for
16 hardware products including work tables, work benches and industrial shelving,
17 storage racks and components therefore as compared to Rhino Linings' and RSI's
18 use of the RHINO STORAGE mark for the same or similar goods.

19
20 **PRAYER FOR RELIEF**

21 WHEREFORE, Rapid Rack requests entry of judgment in its favor and
22 against Rhino Linings and RSI as follows:

23 A. A permanent injunction prohibiting Rhino Linings and RSI from:

24 1) using the mark RHINO STORAGE alone or in combination with
25 other words, symbols or designs including in any manner in connection with
26 hardware products, including work tables, work benches and industrial shelving,
27 storage racks and components therefore; and

28 2) from using any representations of fact in connection with their

1 products which are likely to cause confusion, or to cause mistake or to deceive as
2 to the affiliation, connection or association of Rhino Linings and RSI with Rapid
3 Rack, or as to the origin, sponsorship or approval of Rhino Linings' and RSI's
4 products by Rapid Rack;

5 B. Compensatory damages and disgorgement of Defendants' profits
6 from the sale of goods in connection with which Defendants have used the
7 RHINO STORAGE mark under 15 U.S.C. § 1117;

8 C. Treble damages pursuant to 15 U.S.C. § 1117;

9 D. Punitive damages;

10 E. That U.S. Trademark Registration No. 1,698,407 for the RHINO
11 RACK be declared valid and enforceable.

12 F. Prejudgment interest, costs, expenses, and reasonable attorney's fees
13 for this suit;

14 G. Such other and further relief as this court may deem just and proper.
15

16 DATED: September 23, 2008

Respectfully submitted,
CHRISTIE, PARKER & HALE, LLP

17
18
19 By 
20 David A. Orm
Patrick J. Orm

21 Attorneys for Plaintiff,
22 RAPID RACK INDUSTRIES, INC.
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DEMAND FOR JURY TRIAL

Under Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff Rapid Rack Industries, Inc. hereby demands trial by jury on all issues triable to a jury.

DATED: September 23, 2008

Respectfully submitted,
CHRISTIE, PARKER & HALE, LLP

By 
David A. Dillard
Patrick J. Ormé

Attorneys for Plaintiff,
RAPID RACK INDUSTRIES, INC.

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EXHIBIT A

Int. Cl.: 20

Prior U.S. Cl.: 32

United States Patent and Trademark Office

Reg. No. 1,698,407

Registered June 30, 1992

**TRADEMARK
PRINCIPAL REGISTER**

RHINO RACK

**RAPID RACK INDUSTRIES, INC. (CALIFOR-
NIA CORPORATION)
14421 BONELLI STREET
CITY OF INDUSTRY, CA 91746**

**FOR: WORK TABLES WITH AND WITHOUT
WHEELS, WORK BENCHES, INDUSTRIAL
SHELVING, STORAGE RACKS, AND COMPO-
NENT PARTS THEREFOR, IN CLASS 20 (U.S.
CL. 32).**

**FIRST USE 1-8-1991; IN COMMERCE
1-8-1991.**

**NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "RACK", APART FROM THE
MARK AS SHOWN.**

SN 74-096,229, FILED 9-12-1990.

**CATHERINE KAISER KREBS, EXAMINING
ATTORNEY**

SLA 18

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Dale S. Fischer and the assigned discovery Magistrate Judge is Ralph Zarefsky.

The case number on all documents filed with the Court should read as follows:

CV08- 6266 DSF (RZx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

David A. Dillard, Esq.
david.dillard@cph.com
CHRISTIE, PARKER & HALE, LLP
350 WEST COLORADO BOULEVARD, SUITE 500
PASADENA, CALIFORNIA 91109-7068
626-795-9900 (tel) 626-577-8800 (fax)

COPY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RAPID RACK INDUSTRIES, INC., a
California Corporation

Plaintiff(s)

v.

RHINO LININGS CORPORATION, a California
corporation; and RSI HOME PRODUCTS
MANUFACTURING, INC., a California corp.
Defendant(s)

CASE NUMBER:

CV08-06266 DS-F R)

SUMMONS

TO: THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to file with this court and serve upon plaintiff's attorney
David A. Dillard, Esq., whose address is:
350 West Colorado Boulevard, Fifth Floor, Pasadena, CA 91105

an answer to the ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-
claim which is herewith served upon you within 2 days after service of this Summons upon you, exclusive
of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded
in the complaint.

CLERK, U.S. DISTRICT COURT

Date: September 23, 2008

By:

NATALIE LONGORIA



1198

COPY

CONFIRM COPY UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)
RAPID RACK INDUSTRIES, INC., a California corporation

(b) County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases): **LOS Angeles County**

(c) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)
David A. Dillard, Esq.
david.dillard@cph.com
CHRISTIE, PARKER & HALE, LLP
350 WEST COLORADO BOULEVARD, SUITE 500
PASADENA, CALIFORNIA 91109-7068
(626) 795-9900

DEFENDANTS

RHINO LININGS CORPORATION; a CA corporation; and RSI HOME PRODUCTS MANUFACTURING, INC., a CA corporation
County of Residence of First Listed Defendant (In U.S. Plaintiff Cases Only): **San Diego County**

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)

- | | | | | | |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input checked="" type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN (Place an X in one box only.)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☐ Yes ☐ No **MONEY DEMANDED IN COMPLAINT: \$** _____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Infringement of registered trademark; infringement of unregistered trademark; unfair competition; declaratory relief

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACTS <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litig. <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 28 USC 7609
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VIII(a). IDENTICAL CASES: Has this action been previously filed and dismissed, remanded or closed? ☒ No ☐ Yes
If yes, list case number(s):

FOR OFFICE USE ONLY: Case Number: **CV08-06266**

CV-71 (07/05)

CIVIL COVER SHEET

CONFIRM COPY

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(b). RELATED CASES: Have any cases been previously filed that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: List the California County, or State if other than California, in which **EACH** named plaintiff resides (Use an additional sheet if necessary)

☐ Check here if the U.S. government, its agencies or employees is a named plaintiff.

Los Angeles County

List the California County, or State if other than California, in which **EACH** named defendant resides. (Use an additional sheet if necessary).

☐ Check here if the U.S. government, its agencies or employees is a named defendant.

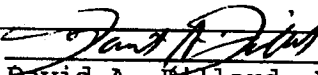
San Diego County, Orange County

List the California County, or State if other than California, in which **EACH** claim arose. (Use an additional sheet if necessary)

Note: In land condemnation cases, use the location of the tract of land involved.

Los Angeles County

X. SIGNATURE OF ATTORNEY (OR PRO PER):


David A. Billard, Esq.

Date 09/23/2008

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM
Authority for Civil Cover Sheet

The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. (a) **PLAINTIFFS - DEFENDANTS.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a Government Agency use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official giving both name and title.
- (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) **Attorneys.** Enter firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section ("see attachment"). Refer to Local Rules 83-2.7 and 41-6 for further information regarding change of attorney name, address, firm association, phone number, fax number or e-mail address, and dismissal of action for failure of pro se plaintiff to keep Court apprised of current address.
- II. **JURISDICTION.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdiction be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States Plaintiff. (1) Jurisdiction is based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States Defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal Question. (3) This refers to suits under 28 U.S.C. 1331 where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, and act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code take precedence and box 1 or 2 should be marked.
- Diversity of Citizenship. (4) This refers to suits under 28 U.S.C. 1332 where parties are citizens of different states. When box 4 is checked, the citizenship of the different parties must be checked. (See Section III below) (Federal question actions take precedence over diversity cases.)
- III. **RESIDENCE (CITIZENSHIP) OF PRINCIPAL PARTIES.** This section of the CV-71 (JS-44) is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **ORIGIN.** Place an "X" in one of the seven boxes:
- (1) Original Proceedings. Cases which originate in the United States District Courts.
- (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C. Section 1441. When the petition for removal is granted, check this box.
- (3) Remanded from Appellate court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- (5) Transferred from Another District. For cases transferred under Title 28 U.S.C. Section 1404(a). DO NOT use this for within-district transfers or multidistrict litigation transfers. When this box is checked, DO NOT check (6) below.
- (6) Multidistrict Litigation. Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, DO NOT check (5) above.
- (7) Appeal to District Judge from Magistrate Judge Judgment. Check this box for an appeal from a magistrate judge's decision.
- V. **REQUESTED IN COMPLAINT.**
- Class Action.* Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand.* In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.
- Jury Demand.* Check the appropriate box to indicate whether or not a jury is being demanded.
- VI. **CAUSE OF ACTION.** Report the civil statute directly related to the cause of action and give a brief description of the cause of action. Do not cite jurisdictional statutes unless diversity.
- Example: U.S. Civil Statute: 47 USC 553
- Brief Description: Unauthorized reception of cable service
- VII. **NATURE OF SUIT.** Place an "X" in the appropriate box. MARK ONE BOX ONLY. If the cause of action fits more than one nature of suit, select the one that best describes your cause of action.
- VIII(a) **IDENTICAL CASES.** Indicate if an identical action has previously been filed and dismissed, remanded or closed. Insert the docket number and judge's name, if applicable.
- VIII(b) **RELATED CASES.** This section of the CV-71 (JS-44) is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge's name for each case. Check all boxes that apply.
- IX. **VENUE.** This section of the CV-71 (JS-44) is used to identify the correct division in which the case will be filed. Please remember to indicate the residence of EACH plaintiff and defendant and the county or state in which each claim arose.
- If the United States government or an agency thereof is a plaintiff or defendant, place an "X" in the appropriate box. Indicate the residence of other parties, if any.
- In each category: for each party and claim, indicate the county, if in California. If other than California, you need only to list the state or country.
- X. **Attorney or party appearing pro per must sign and date this form.**